

# SB 1161, SD 1

**Measure Title:** RELATING TO TELECOMMUNICATIONS.

**Report Title:** Broadband; Permit Exemptions

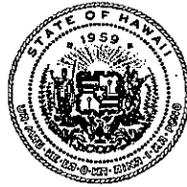
**Description:** Exempts broadband infrastructure improvements from state or county permitting requirements for five years. Exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables. Takes effect 7/1/2050. (SD1)

**Companion:**

**Package:** None

**Current Referral:** EDT/PGM, CPN

NEIL ABERCROMBIE  
GOVERNOR



GLENN M. OKIMOTO  
DIRECTOR

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STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

March 1, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 1161, S.D. 1

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

We support the intent of this bill but with concerns.

This bill proposes to exempt the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, from county and state permitting and approval requirements. The Department of Transportation, Highways Division (DOT), requires permitting and approval for the installation of any infrastructure in its right-of-ways. This process allows DOT to track and coordinate construction in its roadways to ensure that existing infrastructure and future departmental growth are protected from damage or infringement. Additionally, this process ensures that appropriate traffic control plans are in place to protect the public. As such, we ask that the bill be amended to require that any work within the Highways Division right-of-way still requires the entity to obtain the Highway Permit under Section 264-6, HRS.

By bypassing the permitting process, DOT cannot ensure existing infrastructure and the travelling public is protected. As an alternative, therefore, we recommend that the Department of Transportation be immune from any liability for damage or injury resulting from any installation, improvement, or construction activity proceeding under this bill.



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

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KEALI'I S. LOPEZ  
DIRECTOR

EVERETT S. KANESHIGE  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Date: March 1, 2011  
Time: 9:30 a.m.

**WRITTEN COMMENTS ON S.B. No. 1161, S.D. 1 -- RELATING TO  
TELECOMMUNICATIONS**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Glen Chock, and I am the Acting Cable Television Administrator, Department of Commerce and Consumer Affairs (the "Department"). The Department appreciates the opportunity to provide written comments in support of the intent of this measure.

Under Act 199, Session Laws of Hawai'i 2010, the Department's Cable Television Division ("CATV") was required to convene a work group to discuss and develop procedures to streamline the State and County permitting process for broadband services. CATV's then Cable Administrator chaired the work group meetings and the work group met four times in 2010. By inviting private wired and wireless broadband providers to share their experiences, the work group gained an overview appreciation of the many permitting and approval obstacles at the State and County levels that impede the expeditious deployment of broadband infrastructure. The work group then turned more specifically to the challenges faced by telecommunications providers when they attempt to attach new fiber cables to existing utility poles. The permitting work group, to the best of our knowledge, did not come up with any procedures to streamline the permitting process.

In light of request in SSCR No. 288, on S.B. 1161, S.D. 1, the Department will be re-convening the permitting work group to discuss S.B. 1161 on March 4, 2011.

Thank you for the opportunity to provide written comments on S.B. No. 1161, S.D. 1.



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**COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**SB 1161, RELATING TO TELECOMMUNICATIONS**

**Testimony of Gary Hooser  
Interim Director of the Office of Environmental Quality Control**

**March 1, 2011**

1 **Office's Position:** The Office of Environmental Quality Control is opposed to piece-meal  
2 amendments to Chapter 343, Hawaii Revised Statutes. While we support the general intent of  
3 SB 1161, SD1, in providing for the exemption of telecommunications infrastructure from the  
4 requirements of Chapter 343, we are in opposition to the Bill as it is unnecessary and  
5 circumvents the existing exemption process.

6 **Fiscal Implications:** There are no immediate fiscal impacts to the office of OEQC or the State  
7 budget.

8 **Purpose and Justification:** Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative  
9 Rules, currently already allows for exempting projects in the right-of-way, providing that the  
10 project does not result in significant adverse environmental impacts.

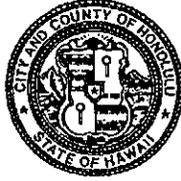
11 So while OEQC supports the intent of SB 1161, SD1, we are opposed to the piece meal  
12 approach of amending Chapter 343, HRS. More importantly, OEQC feels that creating  
13 individual exemptions by statute is not in the best interest of environmental protection. An  
14 appropriate and efficient process currently exists via the office of the OEQC and the  
15 Environmental Council for the review and exemption of projects described in SB 1161, SD1.

16 Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



DAVID K. TANOUÉ  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

March 1, 2011

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Commerce  
and Consumer Protection  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

**Subject: Senate Bill No. 1161, SD1  
Relating to Telecommunications**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1161, SD1.

In our view, this bill might lead to accidental destruction of broadband lines, since their presence in the public right-of-way will not be public knowledge in terms of permits and corresponding records.

In general, while we recognize the intent of what the bill is trying to achieve, the permitting process provides a very essential function to ensure efficient and safe construction when broadband lines, as well as other utility lines, are installed. Bypassing this essential function in the interest of expediting deployment of broadband telecommunications places other interests at potential risk.

Similar to our recent testimony, we respectfully request that our concerns and suggested amendments, as stated below, be considered.

County ministerial permitting requirements include entitlement for permittees. In our view, ministerial permitting is a vital process, as it:

1. Supports public safety, convenience, and general interest by:
  - a. Establishing accountability and responsibility. Permittees are held accountable and responsible for their work. This is especially important when permit inspections reveal substandard work or damages. Without permits, there would be no means to pursue enforcement.

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Commerce  
and Consumer Protection  
State Senate  
Re: Senate Bill No. 1161, SD1  
March 1, 2011  
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- b. Enabling proper maintenance and restoration of affected infrastructure. Regular inspections of permitted work by the county are critical not only to final restoration of infrastructure, but also to daily, temporary repairs on streets and sidewalks. Without permits, immediate attention to potentially hazardous situations by the responsible parties would be hampered.
  - c. Providing documentation and records. If broadband companies were to proceed without county permits, there would be no record of their presence in city rights-of-way. Permitting records are usually utilized as a source of information about existing site conditions, including existing lines, on Construction Plans (CP). The absence of this information would increase the chances that the broadband companies' lines would be disturbed or damaged by construction in a city right-of-way.
2. Protects public facilities. In addition to permit inspections, permit procedures include engineering reviews of potential impacts and appropriate remedies to affected roadways, sidewalks, and other improvements on the surface, as well as to underground utilities. Public facilities would be exposed to problems such as open and sunken trenches, leaking pipelines, and unknown damages should permits not be required.
  3. Enhances coordination among users. Users include the county, utility companies, contractors, and the general public. Without permits, there would be no notices of upcoming work, no conflict checks, no way to address complaints or inquiries, and no traffic control.

The bill, if amended, should include language stating that the city shall not be responsible or held liable for unapproved improvements placed in city rights-of-way or unauthorized modifications to our rights-of-way by the broadband companies.

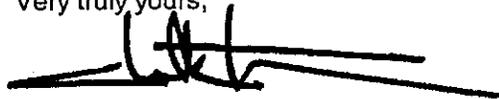
The bill, if amended, should also include language requiring broadband companies to indemnify, hold harmless, and defend the counties against any claims arising from any and all work or negligence without permits for their work and facilities in the public rights-of-way.

Having gone through several streamlining efforts at reducing the time required to permit public and private construction projects, our experience is that there are other areas in the development process that have extra "fat" that could be cut to speed up project delivery. We will be happy to work with the telecommunications companies to expedite their projects through the permitting process, but exempting broadband projects from obtaining various permits would jeopardize public safety and could add extra costs to projects.

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Commerce  
and Consumer Protection  
State Senate  
Re: Senate Bill No. 1161, SD1  
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Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal line extending to the right.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT:jmf

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Council Chair  
Danny A. Mateo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch, Jr.  
G. Riki Hokama  
Michael P. Victorino  
Mike White



Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
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February 24, 2011

TO: Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection

FROM: Robert Carroll *Robert Carroll*  
Council Member, East Maui

DATE: Tuesday, March 1, 2011

SUBJECT: **OPPOSITION OF SB 1161 S.D. 1, RELATING TO TELECOMMUNICATIONS**

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to exempt broadband infrastructure improvements from state or county permitting requirements for five years. Exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I oppose this measure for the following reasons:

1. The County of Maui does not permit the construction or modification of telecommunication towers unless it complies with the Maui County Code, the appropriate community plan, general plan, and land use ordinances. It is imperative that such uses must be reviewed by appropriate agencies to insure its compatibility with surrounding neighborhoods.
2. Furthermore, view corridors must be maintained to prevent visual blight. Our islands attract visitors for their natural beauty, pristine environment and unobstructed open spaces. With the recent economic down turn, counties cannot afford to lose valuable visitors, therefore it is essential that we maintain our natural environment to the best extend possible.
3. Counties throughout the State of Hawaii should have the discretion to enact far reaching and more restrictive legislation to protect their respective environs. Thus SB 1161 seeks to usurp county authority and repudiates home rule principles. Land use zoning policies are likely to have substantial impacts on local economic, social, and environmental conditions. Therefore, local government should retain authority on decisions about zoning policies to the greatest possible extent.

For the foregoing reasons, I oppose this measure.



# **UNIVERSITY OF HAWAII SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
Senate Committee on Commerce and Consumer Protection  
March 1, 2011 at 9:30 am

By  
David Lassner  
Vice President for Information Technology/CIO, University of Hawai'i

### **SB 1161, SD1 – RELATING TO TELECOMMUNICATIONS**

Chair Baker, Vice Chair Taniguchi and Members of the Committee:

Thank you for this opportunity to testify in support of SB 1161, SD1.

During the work of the Hawai'i Broadband Task Force and the subsequent Act 199 working group, it became clear that there are many obstacles to the implementation of advanced broadband services in the State of Hawai'i. One of these obstacles is the time-consuming process associated with obtaining the right to use utility poles and the cost of pole replacements and upgrades.

The University of Hawai'i was fortunate to be awarded over \$36 million in federal stimulus funds to provide direct fiber optic connectivity to every public school, every public library and every public higher education campus and education center in the State. Based on initial assessments, we are concerned that in some rural and remote areas it may not be feasible to meet the requirements of the current bill to qualify for the exemption from pole replacement or upgrade.

We therefore request that Section 3 of SB 1161, SD1 include an additional provision to exempt publicly-funded telecommunications infrastructure projects from any applicable requirements to replace or upgrade poles, provided that all feasible alternatives to reduce overall impact are first considered and that if the exemption is required, that the project proceed in a manner that achieves its public purpose with the least-feasible impact on the existing poles.

Thank you for your consideration of this testimony and our request to ensure that we can provide direct fiber optic connectivity to Hawai'i's educational anchor institutions, including in our most rural and remote areas, with the stimulus funds awarded by the federal government.



**Testimony to the Senate Committee on Commerce and Consumer Protection  
Tuesday, March 1, 2011; 9:30 a.m.  
Conference Room 229  
Hawaii State Capitol**

**RE: SENATE BILL 1161 SD 1 RELATING TO TELECOMMUNICATIONS**

Chair Baker, Vice Chair Taniguchi and the Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") is in general support of SB 1161 SD1.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The measure exempts broadband infrastructure improvements from state or county permitting requirements for five years. The bill also exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables. Effective July 1, 2050.

Broadband applications and services are essential to spurring investment and innovation in business, education, health care, entertainment, government, and almost every other sector in Hawaii's economy, and the demand is constantly growing. The State of Hawaii, however, is among the slowest in the nation in broadband speeds. Therefore, it is critical that investments are made in broadband infrastructure so that Hawaii can become more competitive in the national and global marketplace. This measure is the first step in the right direction in achieving this goal.

Thank you for the opportunity to provide testimony.

**Testimony before the Senate Committee on  
Commerce and Consumer Protection**

**By Paul A. Nakagawa  
Superintendent, Planning Division  
Hawaiian Electric Company, Inc.**

**March 1, 2011**

**Senate Bill 1161, S.D. 1  
Relating to Telecommunications**

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

My name is Paul Nakagawa and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

SB 1161, SD 1 seeks to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements.

While we appreciate and support the intent of this bill, we have concerns with the bill as it is currently written as it may affect engineering and safety standards that HECO currently complies with when adding facilities to existing poles.

We therefore suggest an amendment to page 2, line 19, paragraph (2) to read: "The overall weight loading on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communication Commission and the Hawaii Public Utilities Commission."

During the February 10, 2011 hearing before the Senate Committees on Public Safety, Government Operations, and Military Affairs and Economic Development and Technology, Chair Fukunaga asked if including the above amendment would help to expedite the deployment of high-speed broadband technology. Our response was that we would evaluate it on a case by case basis as we are not familiar whether the FCC rules would supersede PUC rules.

Whether FCC rules or PUC rules prevail when evaluating the overall weight loading on the utility pole(s), we believe that this amendment will further ensure that the engineering and safety standards that Hawaiian Electric currently complies with are kept in place.

Thank you for the opportunity to testify on this matter.

**SB 1161 SD1**  
**RELATING TO TELECOMMUNICATIONS**  
**HAWAIIAN TELCOM**  
**MARCH 1, 2011**

Chair Baker and members of the Senate Committee  
on Commerce and Consumer Protection:

Hawaiian Telcom supports SB 1161 SD1 - "RELATING TO  
TELECOMMUNICATIONS."

Hawaiian Telcom appreciates the work of the Legislature and the Permits Work Group for spearheading efforts to advance the deployment of our state's broadband infrastructure by streamlining the governmental permit process. Our company wholeheartedly supports exempting broadband infrastructure improvements from state or county permit requirements for five years and encourages the committee to consider making such a change permanent.

Advanced broadband services are essential infrastructure for an innovation economy and a knowledge society in the 21<sup>st</sup> century. As we are all aware, broadband deployment drives opportunities for business, education, and healthcare. One national study estimated the positive economic impact of advanced broadband in Hawaii at \$578 million per year. Passage of this aggressive and forward-looking measure will be a positive step in aligning Hawaii's policy objectives with governmental regulations that encourage rather than discourage greater investment in broadband infrastructure.

For all of the reasons set forth above, Hawaiian Telcom supports SB 1161 SD.  
Thank you for the opportunity to provide written testimony.



February 28, 2011

Honorable Rosalyn H. Baker, Chair  
Honorable Brian T. Taniguchi, Vice Chair  
Senate Committee on Commerce and Consumer Protection

**RE: SB 1161 SD1 – Relating to Telecommunications**  
CPN Committee – March 1, 2011, Conference Room 229, 9:30 AM

Aloha Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom (“TWTC”), which has operated in Hawaii since 1994, providing voice, Internet and data networking, and managing nearly 25,000 access lines to state and local governments, military, and businesses in the State. Thank you for the opportunity to present testimony on SB 1161 SD1.

Section 3 of the bill addresses issues relating to when a person or entity that wishes to install or replace telecommunications cables on a utility pole is required to replace or upgrade a pole. TWTC appreciates the efforts to address this issue, as TWTC frequently encounters delays in deploying its facilities while a determination is made as to whether the pole owner will allow us to install or replace cables. However, the biggest issue that TWTC faces in installing or replacing cables is the length of time it takes to receive a response for a request to attach to a pole. We typically must first contact Hawaiian Telcom, the party with whom we have a contractual relationship to access such facilities, who in turn must interface with the electric utility. The bill provides that a pole owner cannot require a person to upgrade or replace a pole if, among other things, the overall weight load on the utility pole does not exceed maximum utility pole safe weights. However, it does not address the issue of the length of time it typically takes for the pole owner to make this determination. TWTC respectfully requests that this committee consider addressing that issue in this bill.

Current FCC regulations require a utility that owns a pole, duct, conduit or right of way to respond to a request for access to such facilities within 45 days. The FCC rules also require that any denial of access provide specific information supporting the denial. Although TWTC would like to propose tighter guidelines, pole attachment requirements that conflict with FCC requirements could be subject to challenge.

Therefore, TWTC respectfully proposes the following amendments for your committee’s consideration:

**Amendment # 1:**

That Section 1 of the bill is amended to reflect the intent to streamline applications to attach to utility poles, as follows:

SECTION 1. Act 199, Session Laws of Hawaii 2010, established a broadband working group to develop procedures for streamlining permitting functions that are applicable to the development of broadband services and broadband technology. One of the discussion items of the working group is to exempt from many of the permitting requirements the installation of new or upgraded broadband infrastructure along existing conduits that are already used for telecommunications. Another discussion item of the working group is to streamline the processing of pole and duct applications.

The purpose of this Act is to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements, and to reduce the time and costs associated with applications to attach to utility poles.

Amendment #2:

That Section 3 of the bill is amended to include procedures that are consistent with current FCC regulations, with one addition. The addition would require the pole owner to inform the requesting party if alternative poles or conduits are available with sufficient capacity for the telecommunications cable. We also note that it's not clear what state agency would be responsible for administration and enforcement of the new provisions.

SECTION 3. No person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new or improve existing telecommunication cables; provided that:

- (1) The overall weight load on the utility pole following the installation or improvement is not greater than the weight load prior to the installation or improvement;
- (2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the Hawaii public utilities commission; and

(3) The utility pole is not damaged due to the installation or improvement of telecommunications cable.

If access to a utility pole is not granted within 45 days of a written request for access, the utility must confirm the denial in writing by the 45<sup>th</sup> day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of capacity, safety, reliability, or engineering standards. In addition, the pole owner shall inform the requesting party if alternative poles or conduits are available that have sufficient capacity to accommodate the telecommunications cable.

As always, we appreciate your consideration of our request.

Sincerely,

/s/

Lyndall Nipps

Vice President, Regulatory Affairs-Western Region

tw telecom

(AZ, CA, CO, HI, ID, NM, OR, UT, WA)

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